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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

5 In the Matter of the Petition for
6 Reinstatement Against:

7 TISHA LAVONNE ARMSTRONG

OAH No. 2008110107

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9 Vocational Nurse License No.
10 VN 182484


11 Respondent.
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13 **DECISION**

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15 The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the
16 Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled
17 matter.
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20 This Decision shall become effective on April 7, 2009.

21 IT IS SO ORDERED this 23rd day of March, 2009.
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26 John P. Vertido, L.V.N.
27 President
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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Reinstatement
By:

OAH No. 2008110107

TISHA LAVONNE ARMSTRONG,

Petitioner.

PROPOSED DECISION

This matter was heard by Administrative Law Judge Chris Ruiz on November 20, 2008, in Los Angeles, California.

Petitioner Tisha Lavonne Armstrong represented herself.

Rene Judkiewicz, Deputy Attorney General, represented the Office of the Attorney General, California Department of Justice, pursuant to Government Code section 11522,

Jurisdictional documents were presented. Testimony was taken and oral argument made. The matter was submitted on November 20, 2008.

FACTUAL FINDINGS

1. On October 21, 1997, the Board issued Petitioner vocational nurse license number VN 182484.
2. On May 22, 2005, Petitioner's license was revoked, by default decision, because she had been convicted of burglary and forgery in 2001, both felonies.
3. The present Petition, filed with the Board on September 5, 2008, requests reinstatement of Petitioner's vocational nurse license.
4. Petitioner is presently employed as a nurse's aide. Petitioner also submitted a number of letters which support her request for reinstatement. Petitioner was licensed for eight years before her license was revoked by default decision. She has now been without a license for over three years. It is fair to give Petitioner a second chance. In 2001, Petitioner had serious financial problems which she attempted to resolve by committing her crimes. Petitioner now realizes that she can ask her family for help if she ever again encounters serious financial problems. Further, the revocation of her license was not related to any

misuse of her vocational nurse license. Having her take the licensing examination, a refresher course, and issuing a probationary license will adequately protect the public health, safety, and welfare.

LEGAL CONCLUSIONS

1. The burden in a petition for reduction of an administrative penalty rests, at all times, with the petitioner. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The burden of the Petitioner herein is to establish by clear and convincing evidence that she is entitled to the requested relief.

2. Cause exists for Petitioner to seek reinstatement of her license. Government Code section 11522 provides that a person whose license has been revoked may petition the governing agency for reinstatement, and governs such petitions unless another, more specific, statute contains different provisions.

3. California Code of Regulations, title 16, section 2579.1, subdivision (b), states:

"Petition for Reinstatement. When considering a petition for reinstatement of a license under the provisions of Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in Section 2579 of this article."

4. California Code of Regulations, title 16, section 2579, states:

When considering the denial of a license under Section 480 of the Business and Professions Code, the Board, in evaluating the rehabilitation of the applicant and his present eligibility for a license, will consider the following criteria:

- (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (b) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.
- (c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (a) or (b).
- (d) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (e) Evidence, if any, of rehabilitation submitted by the applicant.

5. In this case, Petitioner did establish that she is sufficiently rehabilitated based on the reasons set forth in factual findings 1-4. However, the public will only be fully protected if such reinstatement is on a probationary basis. Government Code section 11522 provides the Board authority to reinstate a license upon appropriate "terms and conditions." Three years probation will be sufficient for the Board to verify Petitioner's continuing willingness to act in a lawful manner and to verify her competency as a vocational nurse in this state.

ORDER

IT IS HEREBY ORDERED that the Petition for Reinstatement of Tisha Lavonne Armstrong is granted. A license shall be issued to Petitioner. Said license shall immediately be revoked, the order of revocation stayed, and respondent placed on probation for a period of three years on the following terms and conditions:

OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law to the Board within five (5) days of occurrence. To ensure compliance with this term, respondent shall submit two (2) completed fingerprint cards and the applicable fingerprint processing fees to the Board within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprint cards were already submitted by the Respondent as part of her licensure application process effective July 1, 1996. Respondent shall also submit a recent 2" x 2" photograph of herself within thirty (30) days of the effective date of the decision.

COMPLIANCE WITH PROBATION PROGRAM AND QUARTERLY REPORT REQUIREMENTS

Respondent shall fully comply with terms and conditions of the probation established by the Board and shall cooperate with the representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Probation Program.

Respondent shall submit quarterly reports, under penalty of perjury, in a form required by the Board. The reports shall certify and document compliance with all the conditions of probation.

NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)

Respondent shall notify the Board, in writing, within five (5) days of a change of residence or mailing address, of her new address and any change in her work and/or home telephone numbers.

NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE

Respondent shall notify the Board, in writing, within five (5) days, if she leaves California to reside or practice in another state.

Respondent shall notify the Board, in writing, within five (5) days, upon her return to California.

The period of probation shall not run during the time Respondent is residing or practicing outside California.

NOTIFICATION TO EMPLOYER(S)

When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify her employer of the probationary status of Respondent's license. This notification to the Respondent's current health care employer shall occur no later than the effective date of the Decision. The respondent shall notify any prospective health care employer of her probationary status with the Board prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit quarterly reports to the Board. The reports shall be on a form provided by the Board, shall include a performance evaluation and such other information as may be required by the Board.

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, if she is terminated from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination.

INTERVIEWS/MEETINGS WITH BOARD REPRESENTATIVE(S)

Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board, or its designated representatives.

EMPLOYMENT REQUIREMENTS AND LIMITATIONS

During probation, the Respondent shall work in her licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

While on probation, Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

SUPERVISION REQUIREMENTS

Respondent shall obtain prior approval from the Board, before commencing any employment, regarding the level of supervision provided to the respondent while employed as a licensed vocational nurse or psychiatric technician.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

COMPLETION OF EDUCATIONAL COURSE(S)

Respondent, at her own expense, shall enroll and successfully complete a refresher course(s) as required by the Board. The Board shall notify the Respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of assigned coursework, Respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study. Respondent must complete this education within two years.

Upon successful completion of the course, Respondent shall cause the instructor to furnish proof to the Board within thirty (30) days of course completion.

MAINTENANCE OF VALID LICENSE

Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled.

Should respondent's license, by operation of law or otherwise, expire, upon renewal or reinstatement respondent's license shall be subject to any and all terms of this probation not previously satisfied.

VIOLATION OF PROBATION

If the Respondent violates the conditions of her probation, the Board after giving the Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of the Respondent's license. If during the period of

probation, an accusation or petition to revoke has been filed against the Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board. Upon successful completion of probation, the Respondent's license will be fully restored.

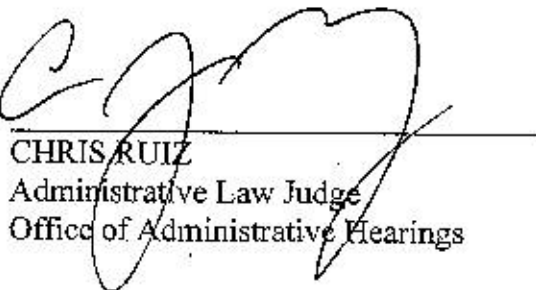
TAKE AND PASS LICENSURE EXAMINATION

Respondent shall take and pass the licensure exam currently required of new applicants for the license possessed by respondent. Respondent shall pay the established examination fees and pass this exam within two years.

As a condition for reinstatement of a license, Respondent shall take and pass the licensure exam currently required of new applicants to resuming practice. Respondent shall pay the established examination and licensing fees.

All standard terms or any other terms of probation shall be tolled until the Respondent has successfully passed the licensure examination and notice of licensure has been mailed to the Respondent by the Board. The Respondent's failure to pass the licensure examination within two (2) years shall be considered a violation of her probationary status.

Dated: January 12, 2009.



CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings